IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No.:   10/798,505   Confirmation No.: 6391

Applicants: Aoyama et al.

Filed: March 11, 2004

Title: SYSTEM AND METHOD FOR
                   DISTRIBUTION CHAIN MANAGEMENT

Art Unit: 3623

Examiner: Susanna Meinecke Diaz

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ATTENTION: Board of Patent Appeals and Interferences

<u>REPLY TO EXAMINER'S ANSWER</u>

TABLE OF CONTENTS

I. STATUS OF CLAIMS (37 C.F.R. §41.37(c)(iii))

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 20

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims rejected: Claims 11 through 14, 21 through 36 and 38.

2. Claims cancelled: Claims 1 through 10, 15 through 20, and 37

C. CLAIMS ON APPEAL

The claims on appeal are: Claims 11 through 14, 21 through 36 and 38.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1.   Whether the Examiner has Misconstrued the Reverse Logistics Means in rejecting claim 11 under 35 U.S.C. 102(a,e) as being anticipated by Yang.

2.   Whether the Examiner has Misconstrued the "Transfer Data" Generated by the Reverse Logistic Means in rejecting claims 12 and 21 under 35 U.S.C. 102(a,e) as being anticipated by Yang.

3.   Whether the Examiner has Misconstrued the "Internal Warehouse" that Receives Shipping Data Generated from the Transfer Data of the Reverse Logistic Means in rejecting claim 13 under 35 U.S.C. 102(a,e) as being anticipated by Yang.

4.   Whether the Examiner has Misconstrued the "Inventory System" that Receives Shipping Data Generated from the Transfer Data of the Reverse Logistic Means in rejecting claims 14 and 24 under 35 U.S.C. 102(a,e) as being anticipated by Yang.

5.   Whether the Examiner has Misconstrued the "Internal Warehouse Order System" that Receives Shipping Data Generated from the Transfer Data of the Reverse Logistic Means in rejecting claim 22 under 35 U.S.C. 102(a,e) as being anticipated by Yang.

6.   Whether the Examiner has Misconstrued the "External Warehouse Order System" that Receives Shipping Data Generated from the Transfer Data of the Reverse Logistic Means in rejecting claim 23 under 35 U.S.C. 102(a,e) as being anticipated by Yang.

7.   Whether the Examiner has Misconstrued "Reverse Logistics Data" in rejecting claim 26 under 35 U.S.C. 102(a,e) as being anticipated by Yang.

8.   Whether the Examiner has Failed to Provide a Statutory Basis for the Rejection of Claim 31 under 35 U.S.C. 102(a,e) as being anticipated by Yang.

9.   Whether the Examiner has Failed to Provide a Prima Facie Basis for the Rejection of Claims 25-30, 32-36, and 38 under 35 U.S.C. 103.

10.   (**New**) Whether the Examiner Ignores Controlling Federal Circuit Precedent in Construing Means Plus Function Claim Limitations in the Examiner's Answer.

11.   (**New**) Whether the Examiner has improperly rejected claims 26-36 and 38 under 35 U.S.C. 101.

12.   (**New**) Whether the Examiner has properly characterized Appellants' arguments in regards to claims 26-30.

13.   (**New**) Whether the Examiner has addressed Appellants' arguments in regards to

claim 31.

14.   **(New)** Whether the Examiner has properly characterized Appellants' arguments in regards to claims 32-36.

15.   **(New)** Whether the Examiner has properly characterized Appellants' arguments in regards to claim 38.

III. ARGUMENT

10.   The Examiner Ignores Controlling Federal Circuit Precedent in Construing Means Plus Function Claim Limitations in the Examiner's Answer.

As previously noted, many of the issues addressed on appeal involve claim construction, which is reviewed *de novo*. No deference is given to the claim constructions adopted by the Examiner, most of which are implicit and which are not explicitly set forth. Because claim construction is reviewed *de novo*, it is not necessary for the Examiner to set forth an explicit construction, and remand for that reason is therefore not required in the event that the Examiner fails to set forth an explicit claim construction. It is further noted that claim terms during examination should be given their broadest reasonable construction during examination, which is their ordinary meaning. All claim terms on appeal are believed to have their ordinary meaning unless otherwise noted, such as when 35 U.S.C. 112(6) is invoked. The Appellants request that the Board pay careful attention to the numerous claim construction issues discussed below.

Controlling Federal Circuit precedent requires in "a means-plus-function claim in which the disclosed structure is a computer, or microprocessor, programmed to carry out an algorithm, *the disclosed structure is not the general purpose computer, but rather the special purpose computer programmed to perform the disclosed algorithm.*" *WMS Gaming, Inc. v. Int'l Game Technology*, 184 F.3d 1339, 1349 (Fed. Cir. 1999). Further recent guidance from the Federal Circuit confirms that flowchart algorithms and other data structures are the proper structure for means plus function claims drawn to special purpose computers. In *Allvoice Computing v. Nuance Comm.*, 504 F.3d 1236, 1245 (Fed. Cir. 2007), flowchart algorithms such as those in Figures 6 through 8 of the pending application were held to provide sufficient structure for such means plus function limitations. Of particular relevance, the flowchart algorithms reproduced in the Federal Circuit's opinion are provided here for reference:

FIG. 8A
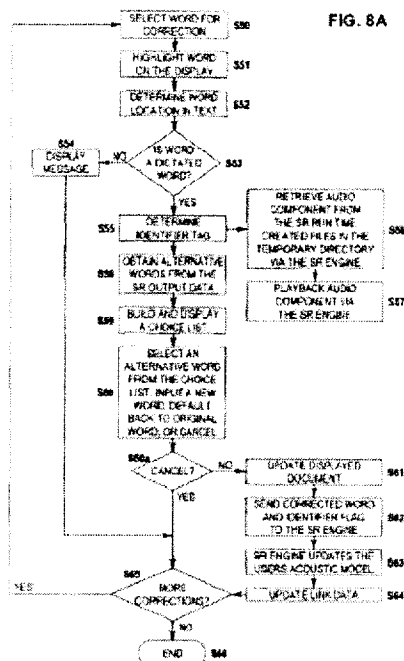
An exemplary flowchart algorithms of Figure 8 of the pending application are reproduced below for convenience:
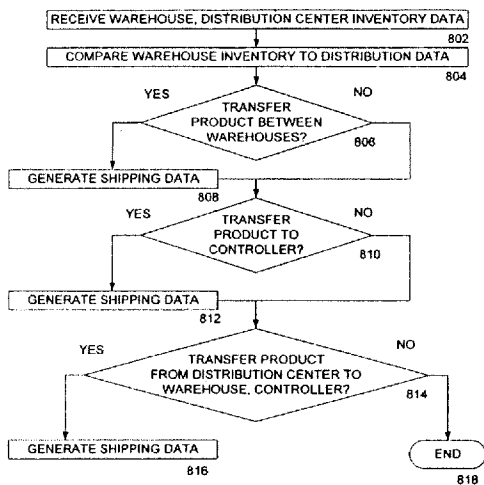

FIGURE 8   800

In response to the Examiner's argument on page 14 of the Examiner's Answer, in *Aristocrat Technologies Australia v. International Gaming Technology* (2007-1419) (Fed. Cir. 2008), the Federal Circuit held the claims invalid as indefinite under 35 U.S.C. 112(2), as lacking corresponding structure. The functional, descriptive materials relied on by the Examiner are similar to the functional descriptive materials in *Aristocrat Technologies* that were held by the Federal Circuit to fail to disclose corresponding structure. The Examiner conveniently ignores the structure

identified by the Applicants, and instead relies on sections of the specification that fail to provide any structure as allegedly providing the claimed structure. Merely because multiple embodiments of the invention are disclosed, some broadly and without corresponding structure and some more narrowly and with corresponding structure, does not mean that the Examiner can ignore the corresponding structure of the narrower embodiments by citing only to the descriptive materials of the broader embodiments. The Examiner does not even attempt to identify any algorithm in the prior art that is the same as or an equivalent to the algorithms disclosed in the specification and previously identified in the Appellant's Brief.

It is clear that the Examiner fails to understand how to properly construe means plus function limitations from other sections of the Examiner's answer addressing Appellant's arguments. For example, at page 16, the Examiner asserts in regards to claim 12 that "limitations from the specification are not read into the claims," in regards to the term "reverse logistic means." However, the general rule as stated by the Examiner does not apply when 35 U.S.C. 112(6) is invoked. *See In re Donaldson*, 16 F.3d 1189, 1193 (Fed. Cir. 1994) ("The plain and unambiguous meaning of paragraph six is that one construing means-plus-function language in a claim *must* look to the specification and interpret that language in light of the corresponding structure, material, or acts described therein, and equivalents thereof, to the extent that the specification provides such disclosure.") (Emphasis added) The Examiner's failure to properly apply controlling Federal Circuit precedent has led to the improper rejection of all claims that include means plus function limitations. The Examiner makes the same mistake in regards to each of these claims throughout the Examiner's Answer: claim 21 – page 17 and claim 13 – page 18. Contrary to the Examiner's repeatedly mistaken assertion throughout the Examiner's Answer that limitations from the specification are not read into the claims, when 35 USC 112(6) is invoked, one construing means-plus-function language in a claim *must* look to the specification and interpret that language in light of the corresponding structure, material, or acts described therein. "Paragraph six does not state or even suggest that the PTO is exempt from this mandate, and there is no legislative history indicating that Congress intended that the PTO should be." *Id.*

The Examiner likewise misunderstands (and misconstrues) Appellant's arguments at page 17 of the Examiner's answer, where the Examiner addresses the Examiner's admission that Yang fails to disclose the corresponding structure of the reverse logistic means of claim 12 that generates transfer data. That section of the Examiner's answer involves claim 12, which was

rejected under 35 U.S.C. 102(a,e), as being anticipated by Yang. The Examiner asserts that the teachings of Singh were cited to address the features missing in Yang, but that is simply not the case in regards to claim 12 - Singh was used in respect to other claims, but the admissions of the Examiner regarding the failure of Yang to disclose relevant corresponding structure can not be ignored, even though they are made in discussion of a different claim.

Likewise, the Examiner also misunderstands the Appellants arguments regarding claim 12 at page 16 of the Answer by stating "Appellant appears to be asserting a special definition for the recited 'reverse logistics.'" However, this again underscores the failure of the Examiner to apply controlling Federal Circuit precedent in construing claims under 35 USC 112(6). The "reverse logistics means" of claim 11, which claim 12 depends from, *must* be interpreted in light of the corresponding structure in the specification and drawings. No such special definition has been asserted in regards to other limitations that use the term "reverse logistics" that are not related to the claimed "reverse logistics means." As such, the Examiner's discussion of a "special definition" is simply irrelevant.

As a result, the Examiner's rejection of all means plus function limitations must be REVERSED.

11. The Examiner has improperly rejected claims 26-36 and 38 under 35 U.S.C. 101.

In rejecting claims 26-36 and 38 under 35 U.S.C. 101, the Examiner summarily asserts that they are not tied to a particular machine or apparatus or do not transform a particular article into a different state or thing, citing to *In re Bilski*, 88 USPQ2d 1385, 1891 (Fed. Cir. 2008). However, the claims in *Bilski* were admitted to be drawn to mental processes. Although claims during examination are given their broadest reasonable interpretation in order to facilitate precision in claiming, that interpretation must be "consistent with the specification, [and] claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990). None of the disclosed embodiments are drawn to mental processes, and a review of the specific claim limitations shows that they are tied to a statutory class.

Consider claim 26, which includes a method for supply chain management comprising receiving warehouse inventory data and distribution center inventory data and generating

reverse logistics data to modify a distribution of inventory at a first warehouse and a second warehouse. Modification of a distribution of inventory at a first warehouse and a second warehouse is not a mental process – it involves particular machines or apparatuses and transforms particular articles into different states and things. Consistent with the specification, claim 26 requires the use of data processing equipment as well as transportation equipment to modify a distribution (state or thing) of inventory (particular articles) at a first warehouse and a second warehouse. In addition with the other claim limitations of claim 26, no "fundamental principle" is pre-empted. As such, the Examiner has not only failed to provide a prima facie basis for the rejection of claim 26 under 35 U.S.C. 101, but the Applicants have shown that no such basis exists.

Claim 27 includes the method of claim 26 further comprising receiving product promotion data and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse in response to the product promotion data. Once again, modification of the distribution of inventory at the first warehouse and the second warehouse is not a mental process and involves particular machines or apparatuses and transforms particular articles into different states. In addition with the other claim limitations of claim 27, no "fundamental principle" is pre-empted.

Claim 28 includes the method of claim 26 further comprising receiving product rollout data and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse in response to the product rollout data. Again, modification of the distribution of inventory at the first warehouse and the second warehouse is not a mental process and involves particular machines or apparatuses and transforms particular articles into different states. In addition with the other claim limitations of claim 28, no "fundamental principle" is pre-empted.

Claim 29 includes the method of claim 26 further comprising receiving product replacement data and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse in response to the product replacement data. Again, modification of the distribution of inventory at the first warehouse and the second warehouse is not a mental process and involves particular machines or apparatuses and transforms particular articles into different states. In addition with the other claim limitations of claim 29, no "fundamental principle" is pre-empted.

Claim 30 includes the method of claim 26 further comprising receiving product deletion data and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse in response to the product deletion data. Again, modification of the distribution of inventory at the first warehouse and the second warehouse is not a mental process and involves particular machines or apparatuses and transforms particular articles into different states. In addition with the other claim limitations of claim 30, no "fundamental principle" is pre-empted.

Claim 31 includes the method of claim 26, wherein the first warehouse is operated by an operator of a supply chain management system and the second warehouse is not operated by the operator of the supply chain management system, and priority is given to maintaining predetermined inventory levels at the first warehouse. This is not a mental process and involves particular machines or apparatuses and transforms particular articles into different states. In addition with the other claim limitations of claim 31, no "fundamental principle" is pre-empted.

Claim 32 includes the method of claim 26 further comprising receiving inventory data for a plurality of retail locations and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse based on the inventory data for the plurality of retail locations. Again, modification of the distribution of inventory at the first warehouse and the second warehouse is not a mental process and involves particular machines or apparatuses and transforms particular articles into different states. In addition with the other claim limitations of claim 32, no "fundamental principle" is pre-empted.

Claim 33 includes the method of claim 32 further comprising receiving product promotion data for a subset of the plurality of retail locations and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse in response to the product promotion data for the subset of the plurality of retail locations. Again, modification of the distribution of inventory at the first warehouse and the second warehouse is not a mental process and involves particular machines or apparatuses and transforms particular articles into different states. In addition with the other claim limitations of claim 33, no "fundamental principle" is pre-empted.

Claim 34 includes the method of claim 32 further comprising receiving product rollout data for a subset of the plurality of retail locations and generating reverse logistics data to

modify the distribution of inventory at the first warehouse and the second warehouse in response to the product rollout data for the subset of the plurality of retail locations. Again, modification of the distribution of inventory at the first warehouse and the second warehouse is not a mental process and involves particular machines or apparatuses and transforms particular articles into different states. In addition with the other claim limitations of claim 34, no "fundamental principle" is pre-empted.

Claim 35 includes the method of claim 32 further comprising receiving product replacement data for a subset of the plurality of retail locations and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse in response to the product replacement data for the subset of the plurality of retail locations. Again, modification of the distribution of inventory at the first warehouse and the second warehouse is not a mental process and involves particular machines or apparatuses and transforms particular articles into different states. In addition with the other claim limitations of claim 35, no "fundamental principle" is pre-empted.

Claim 36 includes the method of claim 32 further comprising receiving product deletion data for a subset of the plurality of retail locations and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse in response to the product deletion data for the subset of the plurality of retail locations. Again, modification of the distribution of inventory at the first warehouse and the second warehouse is not a mental process and involves particular machines or apparatuses and transforms particular articles into different states. In addition with the other claim limitations of claim 36, no "fundamental principle" is pre-empted.

Claim 38 includes the method of claim 26 wherein modification of the distribution of inventory at the first warehouse and the second warehouse is accomplished using regularly scheduled delivery vehicles. Modification of the distribution of inventory at the first warehouse and the second warehouse using regularly scheduled delivery vehicles is not a mental process and involves particular machines or apparatuses and transforms particular articles into different states. In addition with the other claim limitations of claim 38, no "fundamental principle" is pre-empted.

Applicants have thus shown that claims 26-36 and 38 are tied to one or more particular machines or apparatuses, and transform particular articles into different states or things, are not

mental steps, and do no pre-empt the use of a fundamental principle. In fact, other than mental steps or fundamental principles, *Bilski* explicitly declined to generally exclude software or methods that are tied to one or more particular machines or apparatuses or that transform particular articles into different states or things from the scope of statutory subject matter. The Examiner has failed to analyze the rejected claims at all, and merely makes a blanket assertion that they are drawn to mental steps or pre-empt the use of a fundamental principle. Accordingly, the rejection of claims 26-36 and 38 under 35 U.S.C. 101 should be **REVERSED**.

12.   The Examiner misconstrues Appellants' arguments in regards to claims 26-30.

Claim 26 includes receiving warehouse inventory data and distribution center inventory data and generating reverse logistics data to modify a distribution of inventory at a first warehouse and a second warehouse, receiving the reverse logistics data at a first warehouse system and generating shipping data; and receiving the reverse logistics data at a second warehouse system and generating shipping data. The Examiner asserts that the feature upon which Appellant relies is not recited in the rejected claim at page 18 of the answer. However, where an order of a method step is required by the claim, the prior art must disclose the claimed method in the required order. *E-Pas s v. 3COM Corp.*, 473 F.3d 1213, 1222 (Fed. Cir. 2007) ("Substantively, because the language of most of the steps of its method claim refer to the completed results of the prior step, E-Pass must show that all of those steps were performed in order.) As such, based on the claim plain meaning of the claim language, the reverse logistics data is generated after warehouse inventory data and distribution center inventory data is received, and is received at the first warehouse system and the second warehouse system only after it is generated. This is simply common sense – how could reverse logistics data be received *anywhere* before it is generated? The reverse logistics data of Yang is only generated based on a defective part, not based on warehouse inventory data and distribution center inventory data. There is simply nothing in Yang that teaches that the reverse logistics data for a defective part is generated after warehouse inventory data and distribution center inventory data are received, nor that the reverse logistics data is received at

a first warehouse system after which shipping data is generated, nor that the reverse logistics data is received at a second warehouse system after which shipping data is generated.

Further guidance is provided by the Federal Circuit in *Net MoneyIN, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008), where is stated that in order to anticipate under 35 USC 102, a reference "must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements 'arranged as in the claim.'" Yang simply fails to disclose the claimed method steps as arranged in the claim. The Examiner's argument, namely, that the claim elements as arranged in the claim can be ignored for the purposes of imposing a rejection under 35 USC 102, is simply incorrect, as recently confirmed by the Federal Circuit.

In regards to claims 27-30, these claims use the terms "product promotion data," "product rollout data," "product replacement data" and "product deletion data." As such, these terms are different, and the use of different terms requires that they connote different meanings. *CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG*, 224 F.3d 1308, 1317 (Fed. Cir. 2000) ("In the absence of any evidence to the contrary, we must presume that the use of these different terms in the claims connotes different meanings."); *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1333 n.3 (Fed. Cir. 2006) ("[T]he use of two terms in a claim requires that they connote different meanings. . . ."). However, the Examiner relies on the same sections of Singh as allegedly disclosing these limitations, and it is clear that Singh fails to disclose each of these different limitations. The Appellants do not argue that these terms have a special meaning, contrary to the Examiner's assertion, but rather that they have their ordinary meaning, and that the ordinary meaning of each of these four different terms *requires* that they connote different meanings. The Examiner's one and a half page cursory analysis of the rejection of these claims, in addition to claims 25 and 32-36, fails to take controlling Federal Circuit precedent into account in regards to the proper construction of these claims.

13.   The Examiner admits that Appellants' arguments in regards to claim 31 are correct.

The Examiner argues at page 22-23 of the Answer that "there is no determination made as to which operator is more experienced or has more seniority to then identify which warehouse deserves priority. However, claim 31 includes the method of claim 26, wherein the

first warehouse is operated by an operator of a supply chain management system and the second warehouse is not operated by the operator of the supply chain management system, and priority is given to maintaining predetermined inventory levels at the first warehouse. As such, the experience or seniority of the operator is irrelevant. Who operates the first warehouse and the second warehouse when the claim language is properly construed affects the recited functionality, as it affects the warehouse that priority is given to maintaining predetermined inventory levels. Implicitly abandoning this argument, the Examiner also argues that the internal warehouse of Yang "only looks to an external warehouse if supply is unavailable internally." However, that is not the claimed method step of "priority is given to maintaining predetermined inventory levels at the first warehouse." Claim 31 depends from claim 26, which includes the limitation "receiving warehouse inventory data and distribution center inventory data and generating reverse logistics data to modify a distribution of inventory at a first warehouse and a second warehouse." As such, the step of "priority is given to maintaining predetermined inventory levels at the first warehouse" has nothing to do with looking to an external warehouse if supply is unavailable internally. The Examiner's construction of "priority is given to maintaining predetermined inventory levels at the first warehouse" is implicitly "looking to an external warehouse if supply is unavailable internally." Based on the plain meaning of the claim language, this is plainly incorrect.

14. The Examiner misconstrues Appellants' arguments in regards to claims 32-36.

The Examiner states at page 27 of the Answer that the "basis of Appellant's arguments in relation to claims 32-36 relies on the assertion that neither Yang nor Singh discloses retail locations," but the Applicants have argued that neither Yang nor Singh disclose the relevant claim limitations, as properly construed. It is difficult to understand the Examiner's arguments as to these claims, as the Examiner does not address each claim separately, as the Appellants have done in their Brief. However, in light of the change in law that has occurred since the appeal brief was filed, and before the second Answer issued, Appellants address the factors identified in *KSR v Teleflex*, 550 U.S. 398 (2007). It is noted that the Examiner was required to apply these new standards in the second Answer mailed December 24, 2008, and that the Board will no doubt consider these new factors in reaching its decision, such that no new

issues are being raised by addressing these factors.

Claim 32 includes the method of claim 26 further comprising receiving inventory data for a plurality of retail locations and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse based on the inventory data for the plurality of retail locations. The Examiner does not explicitly address the limitations of claim 32, but does assert that Yang discloses a forecast planning function, but admits that Yang fails to disclose that the order controller system generates reverse logistics data to improve a distribution of inventory at a warehouse and a distribution center, or that the inventoried locations are retail locations. The Examiner further asserts that it would be obvious to modify Yang to adapt its reverse logistics order controller system specifically to retail. Second Answer mailed December 24, 2008 at page 9.

As a preliminary matter, claim 32 is a method claim. In order to render a method claim obvious, the cited references must disclose or render obvious the claimed method steps in the order required by the claim. *E-Pass* at 1222. As such, it is also necessary to consider claim 26, which claim 32 depends from, and the order required by claims 26 and 32.

Claim 26 includes a method for supply chain management comprising: receiving warehouse inventory data and distribution center inventory data and generating reverse logistics data to modify a distribution of inventory at a first warehouse and a second warehouse; receiving the reverse logistics data at a first warehouse system and generating shipping data; and receiving the reverse logistics data at a second warehouse system and generating shipping data. Claim 32 does not modify the elements of claim 26, but adds the additional limitation of further comprising receiving inventory data for a plurality of retail locations and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse based on the inventory data for the plurality of retail locations. In this regard, it is again noted that the Examiner has admitted that material that would be necessary to render claim 26 invalid over Yang under 35 USC 102 is missing, namely, generating reverse logistics data to modify a distribution of inventory at a first warehouse and a second warehouse. Even if Singh discloses forecasting demand at a group of retail stores at paragraph 42, it doesn't disclose receiving inventory data for a plurality of retail locations and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse based on the inventory data for the plurality of retail

locations. As previously noted, the reverse logistics of Yang is simply for return of defective parts, and is not for any other purpose. With this background in mind, the KSR factors are addressed.

(A) Combining prior art elements according to known methods to yield predictable results – combining a system for returning defective parts with a system for forecasting would not result in a method step of receiving inventory data for a plurality of retail locations and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse based on the inventory data for the plurality of retail locations. As recognized by the Examiner, reverse logistics applies to the return of materials from a location, such as the return of defective parts. However, Singh deals only with forecasting, and Yang deals only with returning defective parts in regards to any reverse logistics. The two systems of Yang and Singh could not be combined to yield predictable results of receiving inventory data for a plurality of retail locations and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse based on the inventory data for the plurality of retail locations, because the forecast data of Singh would be used to control the inventory at the plurality of retail locations. Singh is not relevant to the method of claim 32, because inventory at the retail locations is forecast, and only defective materials would be returned per Yang. These defective materials would not have any affect on the distribution of inventory at the first warehouse and the second warehouse, as they are returned directly to the supplier 26 per Yang.

(B) Simple substitution of one known element for another to obtain predictable results – substitution of the forecast data in Singh with the reverse logistics data of Yang for defective parts does not yield the claimed method step, as that would not provide generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse based on the inventory data for the plurality of retail locations. Singh would use the reverse logistics data of Yang, which is based on a defective part frequency, to provide additional materials for the retail locations directly. Because Singh uses forecast data to determine inventory levels for retail locations, inventory data for the plurality of retail locations would be used by Singh only to change forecast data. There is no way to substitute any part of Singh with Yang to yield the claimed method step.

(C) Use of known technique to improve similar devices (methods, or products) in the

same way – the known technique of forecast planning of Singh doesn't improve the reverse logistics of Yang to return defective parts to yield the claimed method step of generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse based on the inventory data for the plurality of retail locations. As discussed, Singh would at best accommodate the defective parts of Yang by forecasting more parts for retail locations.

(D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results – again, the known forecast planning techniques of Singh could not be applied to Yang to yield the claimed method of generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse based on the inventory data for the plurality of retail locations. The return of defective parts taught by Yang would be handled by Singh by increasing the forecast amounts at retail locations.

(E) "Obvious to try"–choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success – it would not be obvious to try generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse based on the inventory data for the plurality of retail locations, because of the numerous methods that are available for supply chain management. For example, as taught by Yang, each individual retail location could simply deal with oversupply or undersupply by contacting other retail locations, and that method is generally used, such as when a retail location is out of stock and a buyer asks the retail store operator to contact other retail stores to find a requested item. Each individual store could also deal with inventory on an individual basis, such as by ordering more inventory, offering it for sale, returning it directly to the supplier, returning it to an intermediate location for ad hoc handling, or in a number of different manners. Generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse based on the inventory data for the plurality of retail locations is not one of a finite number of identified, predictable solutions, with a reasonable expectation of success, as the prior art discloses only the use of forecast data to control inventory levels, or reverse logistics to return the occasional defective part directly to a supplier.

(F) Known work in one field of endeavor may prompt variations of it for use in either

the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art – again, the use of forecasting in both Yang and Singh and the transfer of materials between stocking locations in supply chain 12 of Yang provide no design incentives to yield the method step of claim 32. Inventory levels at stocking locations or retail locations are controlled by Yang and Singh through forecasts, or in the case of Yang, by transferring materials between stocking locations. Reverse logistics is only used in Yang for the return of defective parts to a supplier.

(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention – both Yang and Singh purport to resolve the problems of inventory control, either at stocking locations in Yang or at retail locations in Singh, through forecasts. Yang teaches that imbalances at stocking locations can be addressed by transfers between stocking locations. Even applying Yang to retail locations would only yield transferring of inventory between retail locations. Yang teaches reverse logistics only for defective parts to return to the supplier, and does not teach that reverse logistics could be used to address imbalances between stocking locations – instead, these are addressed by direct transfers between stocking locations.

As shown, none of the KSR factors result in the method of claim 32 from any combination or modification of Yang in view of Singh. The Examiner fails to show in the cursory one and half page analysis at pages 9 and 10 of the Answer in which all of claims 25, 27-30, and 32-36 that any of these factors are met.

Likewise, claim 33 includes the method of claim 32 further comprising receiving product promotion data for a subset of the plurality of retail locations and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse in response to the product promotion data for the subset of the plurality of retail locations. As such, this adds an additional limitation to claims 26 and 32. The sections of Singh relied on by the Examiner reveal that product promotion data is only used for forecasting, and at best, the reverse logistics of Yang that is used for return of defective products would only be modified by Singh to forecast additional inventory based on defect rates. The KSR analysis above applies to claim 33, as Singh handles product promotion data

in the same manner as any other product data, i.e., by adjusting forecasts. Based upon Yang, transfers between retail locations would be used to address any inventory imbalances.

Claim 34 includes the method of claim 32 further comprising receiving product rollout data for a subset of the plurality of retail locations and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse in response to the product rollout data for the subset of the plurality of retail locations. As such, this adds an additional limitation to claims 26 and 32. The sections of Singh relied on by the Examiner reveal that product rollout data is only used for forecasting, and at best, the reverse logistics of Yang that is used for return of defective products would only be modified by Singh to forecast additional inventory based on defect rates. The KSR analysis above applies to claim 33, as Singh handles product rollout data in the same manner as any other product data, i.e., by adjusting forecasts. Based upon Yang, transfers between retail locations would be used to address any inventory imbalances.

Claim 35 includes the method of claim 32 further comprising receiving product replacement data for a subset of the plurality of retail locations and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse in response to the product replacement data for the subset of the plurality of retail locations. As such, this adds an additional limitation to claims 26 and 32. The sections of Singh relied on by the Examiner fail to reveal any mention of product replacement, and Yang is likewise silent as to product replacement, much less product replacement for a subset of a plurality of retail locations. As such, in addition to the KSR factors discussed above, neither Yang nor Singh discloses product replacement, and fail to provide a prima facie basis for the rejection of claim 35.

Claim 36 includes the method of claim 32 further comprising receiving product deletion data for a subset of the plurality of retail locations and generating reverse logistics data to modify the distribution of inventory at the first warehouse and the second warehouse in response to the product deletion data for the subset of the plurality of retail locations. As such, this adds an additional limitation to claims 26 and 32. The sections of Singh relied on by the Examiner fail to reveal any mention of product deletion, and Yang is likewise silent as to product deletion, much less product deletion for a subset of a plurality of retail locations. As

such, in addition to the KSR factors discussed above, neither Yang nor Singh discloses product deletion, and fail to provide a prima facie basis for the rejection of claim 36.

15. The Examiner has failed to show that Yang discloses the limitation of claim 38.

In regards to claim 38, which includes the method of claim 26 wherein modification of the distribution of inventory at the first warehouse and the second warehouse is accomplished using regularly scheduled delivery vehicles, the Examiner launches into a discussion of official notice, but fails to demonstrate that Yang discloses the limitation of claim 38. The Examiner also asserts the claim limitation fails to limit the step of modification at page 10 of the second Answer. This is incorrect. Claim 38 limits claim 26 by including that modification of the distribution of inventory at the first warehouse and the second warehouse is accomplished using regularly scheduled delivery vehicles, as opposed to a special scheduled delivery vehicle. The Examiner has failed to cite to any evidence that Yang uses anything other than special deliveries, and in fact Yang discloses that distribution of inventory is only required when actual inventory levels vary from *planned* inventory levels, see paragraphs [0019-20], which would occur on an *unplanned* basis and require the use of special delivery vehicles. However, the use of regularly scheduled delivery vehicles is not the limitation of claim 38. Claim 26 provides that modification is only done in response to the generation of reverse logistics data, which Yang also fails to disclose. Thus, regardless of whether the Examiner relies on a cited reference that demonstrates that it is known to schedule regular deliveries or Official Notice, Yang fails to disclose the limitation of claim 38, as it modifies claim 26.

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Respectfully submitted,

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